

Contingency Contracting Training



Contracting Processes

***Agile Contracting Support...Anytime...
Anywhere***



Overview

- Key Points
- Determinations & Findings / Justifications & Approvals
- Limitations & Exceptions
- Expedited Contracting
- Simplified Acquisition Procedures
- Contractual Instruments
- Delivery Tickets
- Accountability
- Field Ordering Officers and Ordering Officers
- Contract Types
- Paying Agent Duties
- Contract Type Compared to Risk Assessment
- Unauthorized Commitments, Ratifications, and Policy





Key Points

- In any contingency operation, quality acquisition support to the commander is critical to mission accomplishment.
- The absence of direction should be interpreted as permitting innovation and the use of sound business judgment.
- A wide selection of contract types is available in order to provide needed flexibility in acquiring the supplies and services required. Most contingency purchases can be accomplished through Simplified Acquisition Procedures.
- Contingency Contracting Officers (CCO) should put more of an emphasis on price negotiations, even if you have competition, at sustained/established locations.
- The type of contract selected determines both the clauses to be included and the degree of risk accepted by the government.
- The objective is to select the contract type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically.





Determinations & Findings Justifications & Approvals

- Determinations & Findings (FAR 1.704)
 - The “determination” is a conclusion or decision supported by the “findings”
 - “Findings” are statement of fact or rationale essential to support the “determination” of the statute or regulation
 - Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the determination made
- Justifications & Approvals (FAR6.302-1)
 - A J&A's is needed when awarding contracts using other than full and open competition (one of seven reasons)
 - Sole Source, Urgency, Industrial Mobilization, Intl Agreement, Required by Statute, National Security, or Public Interest





Determinations & Findings Justifications & Approvals

- Determinations and Findings (D&F): a special form of written approval by an authorized official, required by statute/regulation as a prerequisite to taking certain contract actions
- Ordinarily for an individual contract action





Determinations & Findings Justifications & Approvals

- J&A for Other than Full and Open Competition
 - Requires written justification
- Procedures for Class J&As
 - Must clearly establish
 - Supplies and services that may be acquired
 - Contractor and contract type
 - Estimated contract value
 - Time period for award and contract performance





Limitations and Exceptions

Authorities

- Only One Responsible Source (FAR 6.302-1)
- Unusual and Compelling Urgency (FAR 6.302-2)
- Industrial Mobilization; Expert Services, Developmental/Research Capability (FAR 6.302-3)
- International Agreement (FAR 6.302-4)
- Authorized by Statute (FAR 6.302-5)
- National Security (FAR 6.302-6)
- Public Interest (FAR 6.302-7)

Note: In using other than full and open competition, the CO must complete a thorough written Justification and Approval explaining the reasons





Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
 - Using oral solicitations
 - Limiting sources in solicitations for urgent and compelling requirements where the Gov't would be seriously injured
 - Exceptions for issuing synopses of proposed contract actions when this would delay award and seriously injure the Gov't
 - Exception to reporting actions between \$25K and \$200K





Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
 - Exceptions to the normal limitations on price ceilings, definitization schedules, and obligation percentages for letter contracts and other forms of undefinitized contract actions supporting contingency, humanitarian or peacekeeping operations
 - Waiving bid guarantees
 - Awarding letter contracts and other forms of undefinitized contract actions to expedite the start of work (the HCA must determine that no other type of contract is appropriate)





Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
 - Exemptions to restrictions on foreign contracting with country subject to economic sanctions administered by the Dept of the Treasury, Office of Foreign assets control for buys up to \$15K
 - Exceptions to the requirement to purchase food, specialty metals, or hand or measuring tools that have been grown, reprocessed, reused, or produced in the United States





Expedited Contracting

- Examples of existing authorities to expedite contracting actions include:
 - Exception for providing payment through electronic funds transfer
 - Protest overrides for urgent requirements where the Gov't will be seriously damaged if award is delayed





Business Considerations

Negotiating Practices

- Document how fair and reasonable prices were obtained
- Oral Agreements can happen with a simple handshake but should be followed with a written signed contract





Simplified Acquisition Procedures

- Simplified Acquisition Procedures (SAP) are streamlined purchasing methods in FAR 13 used to expedite support to the war fighter and reduce administrative lead times
- Agencies shall use SAP to the maximum extent practicable for all purchases of supplies/services not exceeding the Simplified Acquisition Threshold (SAT), including purchases at or below the micro-purchase threshold





Simplified Acquisition Procedures

- Competition requirements are not waived by use of the SAP ... CCO must still promote competition to the maximum extent to obtain supplies/services from the source whose offer is fair and reasonable and most advantageous to the Government





Contractual Instruments

- Contractual Instruments for Contingency
- Most requirements met with SAP, using:
 - SF 44 (Purchase Order-Invoice-Voucher)
 - Dept. of Defense (DD) Form 1155 (Order for Supplies and Services)
 - SF 1449 (Solicitation\Contract\Order for Commercial Items)
 - Blanket purchase agreements (BPA)
 - Government-wide Commercial Purchase Card (GCPC)





Contractual Instruments

- DD Form 1155s:

Purchase orders are self-contained, one-time contracts which typically result in one delivery/one payment ... conditions for use:

- When used as a P.O., shall not exceed the SAT
- Vendors are solicited orally or in writing
- When clauses and provisions are req'd to protect Gov't interest
- As a task or delivery order written against an IDIQ contract





Contractual Instruments

- SF 1449s:
- For commercial items/services up to \$5.5M purchased under SAP or up to \$11M (if used to support a contingency operation)
- **Note: If used to support a contingency, CCOs should use simplified trade off source selection techniques found in FAR 15**





Contractual Instruments

- Standard Form 44:
 - Purchase order-invoice voucher primarily for on-the-spot, over-the-counter purchases of supplies and non-personnel services
- Conditions for Use:
 - Immediately available, one delivery and payment, purchase amount is below micro-purchase threshold (but up to the SAT for a warranted CCO)





Contractual Instruments

- Blanket Purchase Agreements:
 - A simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply





Contractual Instruments

- Conditions for Use: (BPA)
 - When there is a wide variety of items in a broad class of goods (e.g. hardware) needed but the exact items/quantities/delivery are unknown in advance
 - Individual purchases are not expected to exceed the SAT
 - Should be established without a purchase request
 - Shall not cite accounting and appropriation data
 - When there are multiple suppliers that provide similar products/services





Contractual Instruments

- Government Purchase Card (GPC):
 - Preferred method of purchasing supplies or services within the micro-purchase threshold





Contractual Instruments

- Conditions for Use: (GPC)
 - All purchases made or paid are subject to provisions of FAR/DFARS Part 13 therefore must be authorized and documented accordingly
 - May be used by CCOs during contingency, humanitarian, or peacekeeping mission for procuring immediate supplies or services for a single delivery up to CCO's single purchase limit
 - May be used for over the counter purchases (when the local banking infrastructure permits)
 - Frequently used (when local infrastructure supports the technology) over the phone and over the Internet via <https://wbt.access.usbank.com>





Contractual Instruments

- Imprest Funds and Third Party Drafts:
 - Used as a last resort, given the significant security requirements for securing the money ... SF 44s and GPC accounts have generally eliminated the need for imprest funds





Delivery Tickets

- Delivery Ticket Requirements
- GPC
 - Use of GPC by CO
- Imprest Fund and Third Party Drafts
- Oral Solicitations
- Performance-Based Acquisitions
- Performance-Based Contracting Review Thresholds
- Performance-Based Requirements
- Source Selection Processes and Techniques (Competitive)





Accountability

- Procurement Instrument Identification Numbers (PIINS):
 - This number is to aid in tracking all actions
- Conditions for Use:
 - DFARS subpart 204.70 prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related contractual instruments





Accountability

- Sample PIIN:
 - N00062 ...Department or Agency
 - 90 Last 2 digits of Fiscal Year
 - D Instrument Type
 - 0001 Serial Number
 - 0005 Supply Number





Field Ordering Officers and Ordering Officers

- Field Ordering Officers (FOO):
 - SF 44s may be used by persons other than the CCO (such as FOOs)
- Conditions for Appointing FOOs:
 - Be a member from within or outside the contracting organization
 - Be nominated by name to the CO through their Commander
 - Be appointed in writing by the CO with the authority to execute micro-purchases (via the use of SF 44 or ESF 44)
 - Proof of basic training on the appropriate use of the form
 - Is teamed with an appointed/trained Paying Agent





Field Ordering Officers and Ordering Officers

- Ordering Officers (OOs):
 - Are delegated to place calls under existing BPAs
 - Responsibility rests with the CO to train OOs
 - The CO should also provide access to BPA price lists/catalogs
 - Ensure suppliers have written notice regarding authorized OOs
 - Ensure OOs conduct monthly account reconciliation for vendor payment





Contract Types

Selecting Contract Types (FAR 16.101)

Contract types include:

- Fixed-Price
- Firm-Fixed-Price (FFP)
- Cost-Reimbursement
- Incentive Type
- Indefinite Delivery
- Definite Quantity
- Indefinite Quantity
- Requirements
- Letter and Undefined Contract Actions (UCAs)





Contract Types

- Fixed Price Contracts:
 - Government must be able to describe exactly the required contract results and allow the contractor the flexibility to plan, manage, and execute the work to achieve those results

Refer to FAR 16.602 for the various types of instruments





Contract Types

- Indefinite Delivery Contracts:
 - Government anticipates a reoccurring requirement but the specifics e.g. exact time, quantity, and material are not known in advance

Refer to FAR 16.5 and DFARS 216.5 for the various types of instruments





Paying Agent Duties

- CCOs and Paying Agents should work jointly to accomplish the following:
 - Ensure their respective duties are appointed/documentated in writing from the deployed commander
 - Ensure bulk and multiple types of appropriated/non-appropriated funding to support the deployed mission
 - Establish PR initiation/certification/reconciliation process
 - Develop funding strategies to foster business partnerships and economic growth in-theater (e.g. use of progress, advance interim, and partial payments)





Paying Agent Duties

- DoD Financial Management Regulation, Volume 5, Paragraph 020604
- CCOs not normally designated as paying agents
- CCOS must be designated paying agents to make cash payments





Paying Agent Duties

Payments

- Advance and Partial Payments
 - Noncommercial
 - Commercial
- Options Instead of Advance Payments
- Considerations
- Partial Payment
- Settlement of Paying Agent Account





Contract Type Compared to Risk Assessment

During a contingency, humanitarian assistance or peacekeeping operations, selecting a contract type is typically more difficult because customer needs easily may be understated or overstated

- Conditions for Use:
 - CCO should make the determination based on the facts surrounding each individual acquisition
- Objective:
 - Select the type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically





Contract Type Compared to Risk Assessment

- Items for Consideration (*additional factors listed in FAR 16.104*):
 - Stability and predictability of the requirement and local market
 - Specificity of the description of work
 - Track records or past performance of the available contractors

Lastly, document the rationale for the contract type selected in the contract file!





Unauthorized Commitments, Ratifications, and Policy

- Unauthorized Commitment:
 - “An agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.” (FAR 1.602-3(a))
- Ratification:
 - “The act of approving an unauthorized commitment by an official who has the authority to do so.” (FAR 1.602-3(a))





Unauthorized Commitments, Ratifications, and Policy

- Policy (FAR 1.602-3(b)(1)):
 - “Agencies should take positive action to preclude... the need for ratification actions...these [ratification] procedures may not be used in a manner that encourages such commitments being made by Government personnel.”





Unauthorized Commitments, Ratifications, and Policy

Procedures

- Apply the Limitations IAW FAR 1.602-3(c):
 - Government has or will obtain benefit
 - The ratifying official (CO) has the authority to enter into a contract
 - The resulting contract would have otherwise been proper
 - Price is Fair & Reasonable
 - CO recommends payment with legal concurrence
 - Funds are and were available
 - In accordance with other limitations





Unauthorized Commitments, Ratifications, and Policy

- Properly Dispose the Findings
 - Non-Ratifiable
 - Did not meet the criteria of one or more of the limitations, CO's job is complete, but legal concurrence would be prudent
 - Possible Claim?
 - ***Damage by troops military action***
 - FAR Part 50?
 - ***"...facilitate the national defense under extraordinary emergency authority..."***





Unauthorized Commitments, Ratifications, and Policy

- Properly Dispose the Findings
 - Ratifiable
 - Statement from the unauthorized committer
 - Collect all other transaction documents
 - Unauthorized committer's commander's endorsement
 - D&F
 - ***Approval from the chief of the contracting office***
 - ***Evidence of funds availability at time of commitment***
 - Pay the contractor (SF44, PO, etc.)





Unauthorized Commitments, Ratifications, and Policy

The CO's Role

- Remember the definitions
 - Can not ratify that which is not an unauthorized commitment...even if you want to!
- Remember your job
 - Attitude
 - Can not ratify that which is an unauthorized commitment just because you don't feel like it
 - Not your duty to punish and/or harass (If you have the time for it, that means you you're not working hard enough!)





Unauthorized Commitments, Ratifications, and Policy

The CO's Role

- Teach them to fish (training, training, training)
- FAR 1.602-3(b)(1)
 - Unauthorized obligators are not relief contracting officers!





Summary

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